



House of Representatives

General Assembly

File No. 313

February Session, 2008

Substitute House Bill No. 5690

House of Representatives, March 31, 2008

The Committee on Insurance and Real Estate reported through REP. O'CONNOR of the 35th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING THE FREEDOM OF INFORMATION ACT.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 1-218 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective July 1, 2008*):

3 (a) Each contract in excess of two million five hundred thousand
4 dollars between a public agency and a person for the performance of a
5 governmental function shall (1) provide that the public agency is
6 entitled to receive a copy of records and files related to the
7 performance of the governmental function, and (2) indicate that such
8 records and files are subject to the Freedom of Information Act and
9 may be disclosed by the public agency pursuant to the Freedom of
10 Information Act unless such disclosure is prohibited by subsection (b)
11 of section 1-210 of the 2008 supplement to the general statutes, as
12 amended by this act. No request to inspect or copy such records or
13 files shall be valid unless the request is made to the public agency in
14 accordance with the Freedom of Information Act.

15 (b) Any person that performs a governmental function may assert
16 any applicable statutory exemption, including, but not limited to, any
17 exemption under section 1-210 of the 2008 supplement to the general
18 statutes, as amended by this act. With regard to the records or files
19 specified in subdivision (1) of subsection (a) of this section, once a
20 statutory exemption has been asserted by any person that performs a
21 governmental function, the public agency shall not disclose such
22 records and files unless ordered to do so by the Freedom of
23 Information Commission pursuant to section 1-206 of the 2008
24 supplement to the general statutes. Any complaint by a person who is
25 denied the right to inspect or copy such records or files shall be
26 brought to the Freedom of Information Commission in accordance
27 with the provisions of sections 1-205 of the 2008 supplement to the
28 general statutes and 1-206 of the 2008 supplement to the general
29 statutes. Any person that performs a governmental function who has
30 asserted a statutory exemption that subsequently results in a complaint
31 by a person who is denied the right to inspect or copy such records or
32 files shall be deemed to be a party to any proceeding to adjudicate
33 such complaint.

34 (c) Any contract for the provision of managed care services or
35 administrative services by a managed care organization, as defined in
36 section 38a-478, or contract for the provision of administrative services
37 by any entity, to the Department of Social Services shall require the
38 disclosure of records and files created for the purpose of performing
39 such governmental function, including, but not limited to, the rates
40 paid by such managed care organizations to providers of medical
41 services for Medicaid managed care services.

42 Sec. 2. Subsection (b) of section 1-210 of the 2008 supplement to the
43 general statutes is repealed and the following is substituted in lieu
44 thereof (*Effective July 1, 2008*):

45 (b) Nothing in the Freedom of Information Act shall be construed to
46 require disclosure of:

47 (1) Preliminary drafts or notes provided the public agency has

48 determined that the public interest in withholding such documents
49 clearly outweighs the public interest in disclosure;

50 (2) Personnel or medical files and similar files the disclosure of
51 which would constitute an invasion of personal privacy;

52 (3) Records of law enforcement agencies not otherwise available to
53 the public which records were compiled in connection with the
54 detection or investigation of crime, if the disclosure of said records
55 would not be in the public interest because it would result in the
56 disclosure of (A) the identity of informants not otherwise known or the
57 identity of witnesses not otherwise known whose safety would be
58 endangered or who would be subject to threat or intimidation if their
59 identity was made known, (B) signed statements of witnesses, (C)
60 information to be used in a prospective law enforcement action if
61 prejudicial to such action, (D) investigatory techniques not otherwise
62 known to the general public, (E) arrest records of a juvenile, which
63 shall also include any investigatory files, concerning the arrest of such
64 juvenile, compiled for law enforcement purposes, (F) the name and
65 address of the victim of a sexual assault under section 53a-70, 53a-70a,
66 53a-71 of the 2008 supplement to the general statutes, 53a-72a, 53a-72b
67 or 53a-73a of the 2008 supplement to the general statutes, or injury or
68 risk of injury, or impairing of morals under section 53-21 of the 2008
69 supplement to the general statutes, or of an attempt thereof, or (G)
70 uncorroborated allegations subject to destruction pursuant to section 1-
71 216;

72 (4) Records pertaining to strategy and negotiations with respect to
73 pending claims or pending litigation to which the public agency is a
74 party until such litigation or claim has been finally adjudicated or
75 otherwise settled;

76 (5) (A) Trade secrets, which for purposes of the Freedom of
77 Information Act, are defined as information, including formulas,
78 patterns, compilations, programs, devices, methods, techniques,
79 processes, drawings, cost data, customer lists, film or television scripts
80 or detailed production budgets that (i) derive independent economic

81 value, actual or potential, from not being generally known to, and not
82 being readily ascertainable by proper means by, other persons who can
83 obtain economic value from their disclosure or use, and (ii) are the
84 subject of efforts that are reasonable under the circumstances to
85 maintain secrecy; and

86 (B) Commercial or financial information given in confidence, not
87 required by statute;

88 (6) Test questions, scoring keys and other examination data used to
89 administer a licensing examination, examination for employment or
90 academic examinations;

91 (7) The contents of real estate appraisals, engineering or feasibility
92 estimates and evaluations made for or by an agency relative to the
93 acquisition of property or to prospective public supply and
94 construction contracts, until such time as all of the property has been
95 acquired or all proceedings or transactions have been terminated or
96 abandoned, provided the law of eminent domain shall not be affected
97 by this provision;

98 (8) Statements of personal worth or personal financial data required
99 by a licensing agency and filed by an applicant with such licensing
100 agency to establish the applicant's personal qualification for the
101 license, certificate or permit applied for;

102 (9) Records, reports and statements of strategy or negotiations with
103 respect to collective bargaining;

104 (10) Records, tax returns, reports and statements exempted by
105 federal law or state statutes or communications privileged by the
106 attorney-client relationship;

107 (11) Names or addresses of students enrolled in any public school or
108 college without the consent of each student whose name or address is
109 to be disclosed who is eighteen years of age or older and a parent or
110 guardian of each such student who is younger than eighteen years of
111 age, provided this subdivision shall not be construed as prohibiting the

112 disclosure of the names or addresses of students enrolled in any public
113 school in a regional school district to the board of selectmen or town
114 board of finance, as the case may be, of the town wherein the student
115 resides for the purpose of verifying tuition payments made to such
116 school;

117 (12) Any information obtained by the use of illegal means;

118 (13) Records of an investigation or the name of an employee
119 providing information under the provisions of section 4-61dd;

120 (14) Adoption records and information provided for in sections 45a-
121 746, 45a-750 and 45a-751;

122 (15) Any page of a primary petition, nominating petition,
123 referendum petition or petition for a town meeting submitted under
124 any provision of the general statutes or of any special act, municipal
125 charter or ordinance, until the required processing and certification of
126 such page has been completed by the official or officials charged with
127 such duty after which time disclosure of such page shall be required;

128 (16) Records of complaints, including information compiled in the
129 investigation thereof, brought to a municipal health authority pursuant
130 to chapter 368e or a district department of health pursuant to chapter
131 368f, until such time as the investigation is concluded or thirty days
132 from the date of receipt of the complaint, whichever occurs first;

133 (17) Educational records which are not subject to disclosure under
134 the Family Educational Rights and Privacy Act, 20 USC 1232g;

135 (18) Records, the disclosure of which the Commissioner of
136 Correction, or as it applies to Whiting Forensic Division facilities of the
137 Connecticut Valley Hospital, the Commissioner of Mental Health and
138 Addiction Services, has reasonable grounds to believe may result in a
139 safety risk, including the risk of harm to any person or the risk of an
140 escape from, or a disorder in, a correctional institution or facility under
141 the supervision of the Department of Correction or Whiting Forensic
142 Division facilities. Such records shall include, but are not limited to:

143 (A) Security manuals, including emergency plans contained or
144 referred to in such security manuals;

145 (B) Engineering and architectural drawings of correctional
146 institutions or facilities or Whiting Forensic Division facilities;

147 (C) Operational specifications of security systems utilized by the
148 Department of Correction at any correctional institution or facility or
149 Whiting Forensic Division facilities, except that a general description
150 of any such security system and the cost and quality of such system
151 may be disclosed;

152 (D) Training manuals prepared for correctional institutions and
153 facilities or Whiting Forensic Division facilities that describe, in any
154 manner, security procedures, emergency plans or security equipment;

155 (E) Internal security audits of correctional institutions and facilities
156 or Whiting Forensic Division facilities;

157 (F) Minutes or recordings of staff meetings of the Department of
158 Correction or Whiting Forensic Division facilities, or portions of such
159 minutes or recordings, that contain or reveal information relating to
160 security or other records otherwise exempt from disclosure under this
161 subdivision;

162 (G) Logs or other documents that contain information on the
163 movement or assignment of inmates or staff at correctional institutions
164 or facilities; and

165 (H) Records that contain information on contacts between inmates,
166 as defined in section 18-84, and law enforcement officers;

167 (19) Records when there are reasonable grounds to believe
168 disclosure may result in a safety risk, including the risk of harm to any
169 person, any government-owned or leased institution or facility or any
170 fixture or appurtenance and equipment attached to, or contained in,
171 such institution or facility, except that such records shall be disclosed
172 to a law enforcement agency upon the request of the law enforcement

173 agency. Such reasonable grounds shall be determined (A) (i) by the
174 Commissioner of Public Works, after consultation with the chief
175 executive officer of an executive branch state agency, with respect to
176 records concerning such agency; and (ii) by the Commissioner of
177 Emergency Management and Homeland Security, after consultation
178 with the chief executive officer of a municipal, district or regional
179 agency, with respect to records concerning such agency; (B) by the
180 Chief Court Administrator with respect to records concerning the
181 Judicial Department; and (C) by the executive director of the Joint
182 Committee on Legislative Management, with respect to records
183 concerning the Legislative Department. As used in this section,
184 "government-owned or leased institution or facility" includes, but is
185 not limited to, an institution or facility owned or leased by a public
186 service company, as defined in section 16-1 of the 2008 supplement to
187 the general statutes, a certified telecommunications provider, as
188 defined in section 16-1 of the 2008 supplement to the general statutes, a
189 water company, as defined in section 25-32a, or a municipal utility that
190 furnishes electric, gas or water service, but does not include an
191 institution or facility owned or leased by the federal government, and
192 "chief executive officer" includes, but is not limited to, an agency head,
193 department head, executive director or chief executive officer. Such
194 records include, but are not limited to:

195 (i) Security manuals or reports;

196 (ii) Engineering and architectural drawings of government-owned
197 or leased institutions or facilities;

198 (iii) Operational specifications of security systems utilized at any
199 government-owned or leased institution or facility, except that a
200 general description of any such security system and the cost and
201 quality of such system, may be disclosed;

202 (iv) Training manuals prepared for government-owned or leased
203 institutions or facilities that describe, in any manner, security
204 procedures, emergency plans or security equipment;

205 (v) Internal security audits of government-owned or leased
206 institutions or facilities;

207 (vi) Minutes or records of meetings, or portions of such minutes or
208 records, that contain or reveal information relating to security or other
209 records otherwise exempt from disclosure under this subdivision;

210 (vii) Logs or other documents that contain information on the
211 movement or assignment of security personnel;

212 (viii) Emergency plans and emergency preparedness, response,
213 recovery and mitigation plans, including plans provided by a person
214 to a state agency or a local emergency management agency or official;
215 and

216 (ix) With respect to a water company, as defined in section 25-32a,
217 that provides water service: Vulnerability assessments and risk
218 management plans, operational plans, portions of water supply plans
219 submitted pursuant to section 25-32d that contain or reveal
220 information the disclosure of which may result in a security risk to a
221 water company, inspection reports, technical specifications and other
222 materials that depict or specifically describe critical water company
223 operating facilities, collection and distribution systems or sources of
224 supply;

225 (20) Records of standards, procedures, processes, software and
226 codes, not otherwise available to the public, the disclosure of which
227 would compromise the security or integrity of an information
228 technology system;

229 (21) The residential, work or school address of any participant in the
230 address confidentiality program established pursuant to sections 54-
231 240 to 54-240o, inclusive;

232 (22) The electronic mail address of any person that is obtained by
233 the Department of Transportation in connection with the
234 implementation or administration of any plan to inform individuals
235 about significant highway or railway incidents;

236 (23) The name or address of any minor enrolled in any parks and
237 recreation program administered or sponsored by any public agency;

238 (24) Responses to any request for proposals or bid solicitation issued
239 by a public agency or any record or file made by a public agency in
240 connection with the contract award process, until such contract is
241 executed or negotiations for the award of such contract have ended,
242 whichever occurs earlier, provided the chief executive officer of such
243 public agency certifies that the public interest in the disclosure of such
244 responses, record or file is outweighed by the public interest in the
245 confidentiality of such responses, record or file;

246 (25) Records or files related to programs or functions not created for
247 the purpose of performing a governmental function by the
248 organizations and entities specified in subsection (c) of section 1-218,
249 as amended by this act, or other records or files specifically exempted
250 from disclosure under a contract specified in subsection (c) of section
251 1-218, as amended by this act.

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2008	1-218
Sec. 2	July 1, 2008	1-210(b)

INS *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note**State Impact:**

Agency Affected	Fund-Effect	FY 09 \$	FY 10 \$
Freedom of Inf. Com.	GF - Cost	Potential Minimal	Potential Minimal

Municipal Impact: None

Explanation

The bill allows an entity to not disclose requested information if they are performing a governmental function, unless the Freedom of Information Commission orders them to do so, by way of determination of a hearing. To the extent that anyone is denied access to records and files a Freedom of Information Act (FOIA) complaint that results in a hearing by a commissioner of the FOI, a cost would result. FOI commissioners are compensated \$200 plus mileage per meeting/hearing. This cost is not anticipated to be significant.

As the bill implements the current practice of the Department of Social Services, no fiscal impact to the department is anticipated.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**sHB 5690*****AN ACT CONCERNING THE FREEDOM OF INFORMATION ACT.*****SUMMARY:**

This bill makes changes in the Freedom of Information Act (FOIA) as it applies to a person (e.g., entity) performing a governmental function pursuant to a legally authorized contract of more than \$2.5 million with a public agency.

By law, the contract must provide that the (1) public agency is entitled to copies of the entity's records and files related to performance of the governmental function and (2) entity's records and files are subject to FOIA and public disclosure. The bill exempts from these disclosure requirements the entity's records or files (1) that are related to programs and functions but were not created for the purpose of performing a governmental function or (2) specifically exempted from disclosure under a contract to provide managed care or administrative services.

The bill permits an entity performing a governmental function to assert a statutory exemption from having to disclose requested records or files. If an entity makes such an assertion, the bill prohibits the public agency from disclosing the records and files unless the Freedom of Information Commission orders it to do so. If anyone who is denied access to records or files because of an entity's assertion subsequently files a FOIA complaint with the commission, the bill deems the entity to be a party to any proceeding to adjudicate the complaint.

The bill requires that a contract between the Department of Social Services (DSS) and (1) a managed care organization (MCO) for managed care or administrative services or (2) another entity for

administrative services must provide that records and files created for the purpose of performing the contracted governmental function are subject to disclosure. It specifies that these records or files include rates an MCO pays to Medicaid managed care service providers.

EFFECTIVE DATE: July 1, 2008

MANAGED CARE ORGANIZATION

By law, an MCO is an insurer, HMO, hospital or medical service corporation, or other organization delivering, issuing, renewing, or amending any individual or group health managed care plan in Connecticut (CGS § 38a-478(2)).

BACKGROUND

Governmental Function

The law defines “governmental function” as the administration or management of a public agency’s program that the law authorizes to be performed by an entity (1) receiving public agency funding; (2) participating in policy formation and decisions connected to the program that binds the agency; and (3) where the public agency is significantly, but not necessarily directly or continuously, involved in or regulating the entity’s administration or management. Performing a governmental function does not include merely providing goods and services to an agency with no program administration or management responsibilities (CGS § 1-200(11)).

Anyone who wants to (1) inspect or copy an entity’s records or files related to its governmental function must make a request to the appropriate public agency or (2) complain because the agency denied a request must contact the Freedom of Information Commission (CGS § 1-218).

Court Case

During the last few years, academic researchers, health advocates, and others requested information from DSS about the four MCOs then serving the state’s HUSKY A and B population, including the fees the

MCOs paid providers for rendering medical services to this population. In many instances, the information had been refused because the MCOs believe it is proprietary, and DSS generally accepted that position.

Those seeking the information filed a request under FOIA. The commission granted the request, but the MCOs (except for WellCare) appealed to Superior Court, which dismissed the case in November 2006 concluding, in part, that the MCOs perform a governmental function and, thus, are subject to FOIA (*Health Net of Connecticut et al., vs. Freedom of Information Commission*, Nos. CV 06-0401028S, CV 06-4010429S, CV 06-4010430S, CV 06-4009521S; November 29, 2006). The case is on appeal to the Supreme Court (*Anthem et al. vs. Freedom of Information Commission*, Nos. 17821, 17822, 17823).

In November 2007, Governor Rell directed DSS to terminate its contracts with the four MCOs.

COMMITTEE ACTION

Insurance and Real Estate Committee

Joint Favorable Substitute

Yea 13 Nay 4 (03/13/2008)